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UNITED STATES DISTRICT COURT
EASTERN DISTRICT - SACRAMENTO

ROBIN TILLMAN, an individual,)	Case No.: 2:20-cv-00647-KJM-KJN
)	
Plaintiff,)	STIPULATION FOR PROTECTIVE
)	ORDER; AND PROTECTIVE ORDER
vs.)	
)	
ESA MANAGEMENT, LLC; TINA DOE, an)	Assigned to Judge: Kimberly J. Mueller
individual; and DOES 1-25, inclusive,)	Courtroom 3
)	
Defendants.)	

By and through their attorneys of record, Plaintiff, ROBIN TILLMAN and Defendant, ESA MANAGEMENT, LLC, hereby stipulates to and petitions the Court to enter the following Stipulated Protective Order:

1. DEFINITIONS

1.1 Party/Parties: any party or parties to this action, including all of its or their officers, directors, employees, outside consultants (as defined in paragraph 1.8, *infra*), retained experts, and outside counsel (and their support staff).

1.2 Disclosure or Discovery Material: all items or information, regardless of how generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced, generated, served or otherwise provided in disclosures or responses to discovery in this matter.

1.3 "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that (i) constitute a trade secret or confidential or private

1 or proprietary matters, including but not limited to financial, research, development, testing,
2 design or commercial information, or that might be of competitive value to any entity other than
3 the Designating Party; or (ii) were received in confidence from third parties.

4 **1.4** Receiving Party/Parties: a Party or Parties that receive Disclosure or Discovery
5 Material from a Producing Party/Parties.

6 **1.5** Producing Party/Parties: a Party or Parties, or non-party or non-parties that
7 produce Disclosure or Discovery Material in this action.

8 **1.6** Designating Party/Parties: a Party or Parties, or non-party or non-parties that
9 designate information or items that it produces as “Confidential.”

10 **1.7** Protected Material: any Disclosure or Discovery Material that is designated by
11 the Producing Party/Parties as “Confidential.”

12 **1.8** Outside Consultant: a person with specialized knowledge or experience in a
13 matter pertinent to the litigation who has been retained by a Party/Parties or its/their counsel to
14 serve as an expert witness or as a consultant in this action and who is not a current employee of
15 a Party/Parties or of a competitor of a Party/Parties and who, at the time of retention, is not
16 anticipated to become an employee of a Party/Parties or a competitor of a Party/Parties.

17 **1.9** Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
19 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.
20 This definition includes ESI vendors, professional jury or trial consultants retained in connection
21 with this litigation, and mock jurors retained by such consultants to assist them in their work.

22 **2. DURATION**

23 Even after the termination of this litigation, the confidentiality obligations imposed by
24 this Order shall remain in effect until a Designating Party/Parties agree(s) otherwise in writing
25 or a court order otherwise directs.

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3. DESIGNATING PROTECTED MATERIAL

Except as otherwise provided in this Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party/Parties affix or stamp the legend “CONFIDENTIAL” the document. If only a portion or portions of the material on a page qualifies for protection, the Producing Party/Parties must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party/Parties or non-party/parties that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party/Parties has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the Inspecting Party/Parties has identified the documents it wants copied and produced, the Producing Party/Parties must determine which documents, or portions thereof, qualify for protection under this Order. Before producing the specified documents, the Producing Party/Parties must affix the “CONFIDENTIAL” legend, as described above.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party/Parties or non-party/parties offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party/Parties or non-party/parties that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 30 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 30 days shall be covered

1 by the provisions of this Stipulated Protective Order.

2 Transcript pages containing Protected Material must be separately bound by the court
3 reporter, who must affix on each such page the legend “CONFIDENTIAL,” as instructed by the
4 Party/Parties or non-party/parties offering or sponsoring the witness or presenting the testimony.

5 (c) for information produced in some form other than documentary, and for any other
6 tangible items, that the Producing Party/Parties affix in a prominent place on the exterior of the
7 container or containers in which the information or item is stored the legend
8 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
9 Producing Party/Parties, to the extent practicable, shall identify the protected portions.

10 **4. ACCESS TO PROTECTED MATERIAL**

11 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
12 the court or permitted in writing by the Designating Party/Parties, a Receiving Party/Parties may
13 disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) The Receiving Party's/Parties' counsel of record in this action, as well as
15 employees and agents of said counsel to whom it is reasonably necessary to disclose the
16 information for this litigation;

17 (b) The Receiving Party/Parties, and the officers, directors, and/or employees of the
18 Receiving Party/Parties to whom disclosure is reasonably necessary for this litigation and who
19 have signed the “Acknowledgment And Agreement To Be Bound By Protective Order” attached
20 hereto as Exhibit A;

21 (c) Outside Consultants (as defined in this Order) of the Receiving Party/Parties to
22 whom disclosure is reasonably necessary for this litigation and who have signed the
23 “Acknowledgment And Agreement To Be Bound By Protective Order which is attached hereto
24 as Exhibit A;

25 (d) Witnesses at deposition and/or trial, provided that such witnesses may not retain
26 copies of Protected Material unless permitted by other provisions of this Order and provided that
27 such witnesses have signed the “Acknowledgment And Agreement To Be Bound By Protective
28 Order” which is attached hereto as Exhibit A;

- 1 (e) The Court and its personnel;
- 2 (f) Court reporters and videographers employed in connection with this action;
- 3 (g) Any designated arbitrator or mediator who is assigned to hear this matter, or who
- 4 has been selected by the Parties, and his or her staff, provided that a representative of which has
- 5 signed the “Acknowledgment And Agreement To Be Bound By Protective Order” which is
- 6 attached hereto as Exhibit A;
- 7 (h) Professional Vendors to whom disclosure is reasonably necessary for this
- 8 litigation, and a representative of which has signed the “Acknowledgement and Agreement To
- 9 Be Bound By Protective Order” which is attached hereto as Exhibit A;
- 10 (i) Other persons only upon consent of the Producing Party/Parties or upon order of
- 11 the Court and provided that such persons have signed the “Acknowledgement And Agreement
- 12 To Be Bound By Protective Order” attached hereto as Exhibit A.

13 **5. USE OF PROTECTED MATERIAL**

14 **5.1** Use Of Protected Material By Receiving Party/Parties. Unless otherwise ordered

15 by the Court, or agreed to in writing by the Parties, all Protected Material, and all information

16 derived therefrom, shall be used by the Receiving Party/Parties only for purposes of this

17 litigation, and shall not be used in any other way, or for any other purpose. Information contained

18 or reflected in Protected Materials, including but not limited to the title, heading or contents of

19 Protected Materials, shall not be disclosed in conversations, presentations by parties or counsel,

20 in court or in other settings that might reveal Protected Material, except in accordance with the

21 terms of this Order.

22 **5.2** Use of Protected Material By Designating Party/Parties. Nothing in this Order

23 shall limit any Designating Party’s/Parties’ use of its own documents and information, nor shall

24 it prevent the Designating Party/Parties from disclosing its own confidential information,

25 documents or things to any person. Such disclosure shall not affect any designations made

26 pursuant to the terms of this Order, so long as the disclosure is made in a manner that is

27 reasonably calculated to maintain the confidentiality of the information.

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5.3 Use of Protected Material at Depositions and Trials. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial, and may testify concerning all Protected Material of which such person has prior knowledge and/or to the extent the questions posed by the deposing attorney are reasonably calculated to lead to the discovery of admissible evidence.

5.4 Any person other than the witness, his or her attorney(s) and any person qualified to receive Protected Material under this Order, shall be excluded from the portion of the examination concerning such information, unless the Producing Party/Parties consents to persons other than qualified recipients being present at the examination. If the witness is represented by an attorney who is not qualified under this Order to receive such information, then prior to the examination, the attorney shall be requested to sign the “Acknowledgement and Agreement To Be Bound By Protective Order” attached as Exhibit A. In the event that such attorney declines to sign the Acknowledgement and Agreement To Be Bound By Protective Order prior to the examination, the parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting such attorney from disclosing such Protected Material.

This section shall not prohibit the Party/Parties from attending trial even where they shall be admitted, or witnesses testifying regarding, Protected Material, nor shall it bar a Party/Parties from any examination regarding Protected Material. During the trial of this case, if any Party/Parties seeks to introduce into evidence documents which are subject to this Order, the Producing Party/Parties shall make the appropriate request of the Court to protect against the dissemination of such Protected Material.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's/Parties' confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party/Parties does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

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1 **6.2** Meet and Confer. A Party/Parties that elects to initiate a challenge to a
 2 confidentiality designation must do so in good faith and must begin the process by conferring in
 3 writing with counsel for the Designating Party/Parties. If a party contends that certain Protected
 4 Material is not entitled to confidential treatment after meeting and conferring such party must
 5 give written notice to the party who designated the material as Protected Material, citing the
 6 Bates numbers of the pages if possible, and/or specific identification numbers or marks of a thing
 7 designated as Protected Material. In conferring, the Challenging Party/Parties must explain the
 8 basis for its belief that the confidentiality designation was not proper and must give the
 9 Designating Party/Parties at least fourteen (14) court days to review the Protected Material, to
 10 reconsider the circumstances, and, if no change in designation is offered, the Designating
 11 Party/Parties must explain the basis for the chosen designation. A Challenging Party/Parties may
 12 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
 13 process first or if the Designating Party/Parties does not respond to the challenge within fourteen
 14 (14) court days, or such other time as agreed by the Parties.

15 **6.3** Judicial Intervention. Within a reasonable time after receiving such written
 16 notice, but not to exceed ten (10) days, the party seeking confidential treatment may apply to the
 17 Court by noticed motion for a ruling that the document or transcript shall be treated as
 18 Confidential pursuant to the terms of this Order. Pending the outcome of the application, the
 19 document or testimony shall be afforded the confidential treatment described in Paragraph 4.
 20 The motion must be accompanied by a competent declaration that affirms movant complied with
 21 the meet and confer requirements in Section 6.2 above. Until the court rules on the challenge, all
 22 parties shall continue to afford the material in question the level of protection to which it is
 23 entitled under the Producing Party's designation.

24 **7. INADVERTENT FAILURES TO DESIGNATE**

25 If corrected within a reasonably timely manner upon discovery, an inadvertent failure to
 26 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive
 27 the Designating Party's/Parties’ right to secure protection under this Order for such material. If
 28 material is appropriately designated as “CONFIDENTIAL” after the material was initially

1 produced, the Receiving Party/Parties, on reasonably timely notification of the designation, must
2 make reasonable efforts to assure that the material is treated in accordance with the provisions
3 of this Order.

4 **8. NO WAIVER OF PRIVILEGE**

5 **8.1** Inspection or production of documents (including physical objects) shall not
6 constitute a waiver of the attorney-client privilege, work product immunity, or any other
7 applicable privilege or immunity, if, after the Producing Party/Parties becomes aware of any
8 such disclosure, the Producing Party/Parties designates any such documents as within the
9 attorney-client privilege, work product immunity or any other applicable privilege or immunity,
10 and requests in writing return of such documents to the Producing Party/Parties. Upon request
11 by the Producing Party/Parties, the Receiving Party/Parties shall immediately retrieve and return
12 all copies of such document(s). No use shall be made of such documents during deposition or
13 at trial. Furthermore, a party who receives information or documents that appear to be privileged
14 and not intentionally produced shall promptly notify the Producing Party/Parties of such
15 information and documents and shall immediately return such information and documents to the
16 Producing Party/Parties.

17 **8.2** Nothing herein shall prevent the Receiving Party/Parties from challenging the
18 propriety of the attorney-client privilege, work product immunity or other applicable privilege
19 or immunity designation by submitting a written challenge to the Court; provided, however, that
20 such challenge shall not assert as a ground for challenge the fact of the initial production or
21 inspection of the documents later designated as attorney-client privileged, work product, or
22 subject to another applicable privilege or immunity.

23 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party/Parties learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this Stipulated
26 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
27 Party/Parties of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
28 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were

1 made of all the terms of this Order, and (d) request such person or persons execute the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **10. FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party/Parties or a court order secured
5 after appropriate notice to all interested persons, a Party/Parties may not file in the public record
6 in this action any Protected Material. A Party/Parties that seeks to file under seal any Protected
7 Material must comply with California Rules of Court 2.550 and 2.551. To the extent reasonably
8 practicable, the Parties agree to meet and confer for purposes of attempting to agree upon a
9 redacted version of Protected Material that may be filed publicly in advance of any court filing
10 or submission.

11 **11. FINAL DISPOSITION**

12 After the final termination of this action, including all appeals, at the request of any
13 Producing Party/Parties, each Receiving Party/Parties shall either return all Protected Material
14 to the Producing Party/Parties or destroy all Protected Material. As used in this subdivision, “all
15 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
16 reproducing or capturing any of the Protected Material. Whether the Protected Material is
17 returned or destroyed, within sixty days of the Producing Party’s/Parties’ request, the Receiving
18 Party/Parties must submit a written certification to the Producing Party/Parties (and, if not the
19 same person or entity, to the Designating Party/Parties) that identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
21 Receiving Party/Parties has not retained any copies, abstracts, compilations, summaries or other
22 forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
23 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
24 memoranda, correspondence or attorney work product, even if such materials contain Protected
25 Material. Any such archival copies that contain or constitute Protected Material remain subject
26 to this Protective Order.

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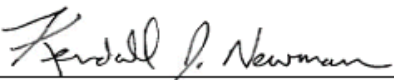
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ORDER

The court has reviewed the parties' stipulated protective order, which comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1(c);¹ see also Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) ("Generally, the public can gain access to litigation documents and information produced during discovery unless the party opposing disclosure shows 'good cause' why a protective order is necessary.") Therefore, the court GRANTS the request subject to the following clarification.

This court's Local Rules indicate that once this action is closed, "unless otherwise ordered, the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f). Courts in the district generally do not agree to retain jurisdiction after closure of the case. See, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017). Based on this rationale, the court will not retain jurisdiction over this protective order once the action is closed.

Dated: August 20, 2020


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ The Court's Local Rules instruct the parties, when requesting a protective order, to include in their submission:

- (1) A description of the types of information eligible for protection under the order, with the description provided in general terms sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a troubled child);
- (2) A showing of particularized need for protection as to each category of information proposed to be covered by the order; and
- (3) A showing as to why the need for protection should be addressed by a court order, as opposed to a private agreement between or among the parties.

Local Rule 141.1(c).